



PRIVACY ACT OVERVIEW

- ◆ IT IS ABOUT RECORDS THE GOVERNMENT IS MAINTAINING ON YOU AND ME
- ◆ IT'S PERSONAL
- ◆ THAT'S WHY WE NEED TO UNDERSTAND IT
- ◆ WE NEED TO DEVELOP A PASSION FOR PRIVACY!



PURPOSE

- ◆ Regulate the collection, maintenance, use, and dissemination of personal information held by the Executive Branch of Government
 - Does not pertain to Judicial or Legislative Branches, commercial enterprises, state or local governments
 - Been in effect since Sep 27, 1975
 - Codified as 5 U.S.C. 552a
 - Public Law 93-579



CHALLENGES

- ◆ Imprecise language
- ◆ Limited legislative history
- ◆ Outdated regulatory guidance
- ◆ Unpublished district court decisions
- ◆ Moving from paper to electronic records
- ◆ Need to adopt new processing protocols to ensure individual privacy is not violated as we move from paper to electronic media



FROM “NO” TO “KNOW”

- ◆ Privacy needs to be considered as we adopt new practices
 - Saying NO will simply result in you not being asked – Why? They see you as an impediment to process.
 - Educating them on how to accomplish their task without violating privacy is the key.



BUILDING YOUR TEAM

- ◆ It's important to build your team. Team members should include:
 - Records manager
 - IT professionals
 - Legal office
 - Program managers
 - Upper level management



BACKGROUND

- ◆ The Privacy Act established safeguards for the protection of records the Executive Branch of Government collects and maintains on United States citizens or lawfully admitted permanent residents.



BACKGROUND

- ◆ Term “privacy” is broad – The Privacy Act itself is limited in scope
 - Only pertains to the Executive Branch of Government
- ◆ Only pertains to records in a “system of records” that is retrieved by an individual’s name and/or personal identifier



MANDATES

Inform people at the time of collection

- why the information is being collected
- how it will be used

Publish a notice in the Federal Register
of new or revised systems of records

Ensure that information is accurate,
relevant, timely, and complete before
disclosing to others



MANDATES

- ◆ Allow individuals access to information on themselves
- ◆ Disclosure accounting
- ◆ Opportunity to correct inaccuracies in their records (fact not opinion)



ROLE OF OMB

- ◆ Prescribe guidelines and regulations for the use of agencies in implementing the Act
- ◆ Provide continuing assistance to and oversight of the implementation



SYSTEMS OF RECORDS

- ◆ Definition – records that are retrieved by an individual's name and/or personal identifier.
- ◆ Key: retrieved by, not retrievable by
- ◆ Umbrella systems – systems designed for use by all. For example:
 - personnel record systems
 - pay systems
 - correspondence files



SYSTEMS OF RECORDS

- ## NOTICES
- ◆ Non-exempt systems – no exemption rule applies
 - ◆ Exempt systems – all or part of the record is exempt from access under the provisions of the Privacy Act. Examples:
 - Investigative files
 - Security files



SYSTEM OF RECORDS

- ◆ Blueprint that describes the kinds of information we are authorized to collect on an individual
- ◆ Systems notice has the following fields:
 - SYSTEM NUMBER
 - SYSTEM NAME
 - LOCATION
 - CATEGORIES OF RECORDS



SYSTEMS NOTICE

- ◆ CATEGORIES OF INDIVIDUALS
- ◆ AUTHORITY
- ◆ PURPOSE
- ◆ ROUTINE USES
- ◆ STORAGE
- ◆ RETRIEVABILITY
- ◆ SAFEGUARDS



SYSTEMS NOTICE

- ◆ RETENTION AND DISPOSAL
- ◆ SYSTEM MANAGER AND ADDRESS
- ◆ NOTIFICATION PROCEDURE
- ◆ RECORD ACCESS PROCEDURE
- ◆ CONTESTING RECORD PROCEDURES
- ◆ RECORD SOURCE CATEGORIES
- ◆ EXEMPTIONS CLAIMED FOR THIS SYSTEM



RELEASABILITY OF RECORDS

- ◆ UNLIKE FOIA, THE PRIVACY ACT SYSTEMS OF RECORDS NOTICE IDENTIFIES WHAT INFORMATION CAN BE WITHHELD UNDER THE SECTION “EXEMPTIONS CLAIMED FOR THIS SYSTEM.”
- ◆ EXCEPTION:
 - CLASSIFIED IN THE CASE OF DOD
 - (d) (5)



PRIVACY ACT ACCESS

- ◆ The Privacy Act allows you to:
 - Seek access to records retrievable by your name and/or personal identifier that are contained in a PA system of records.
 - Provide written authorization for your representation to act on your behalf.
 - Seek records on behalf of a minor child, if you are their legal guardian or parent, acting in the best interest of the minor child.



AMENDING RECORDS

- ◆ The Privacy Act allows individuals to seek amendment to erroneous information – based on fact – not opinion.
- ◆ Procedures
 - Submitted in writing – except for routine administrative matters, such as change of address/phone number
 - Include a description of the information to be amended; reason for amendment; type of amendment action sought – including all available evidence that supports the request (Burden of proof on the requester)



AMENDING RECORDS

- ◆ Systems manager makes the call and must acknowledge receipt within 10 working days – make a ruling within 30 working days.
- ◆ If the request is denied
 - Requester notified
 - Given opportunity to place a statement of disagreement with file



PRIVACY ACT APPEALS

- ◆ Individuals wishing to appeal a denial of notification, access, or amendment should follow the procedures set forth in the agency's Privacy Act regulation.
 - Must be in writing
 - Submitted within a specific time-frame
 - Include a copy of the denial letter
 - Include statement of reasons for review
 - Submitted to the appellate authority



CIVIL AND CRIMINAL PENALTIES

- ◆ Any officer or employee of an agency who:
 - Willfully discloses information - misdemeanor and fined not more than \$5,000
 - Willfully maintains an illegal system of records- misdemeanor and fined not more than \$5,000
 - Willfully requests under false pretenses - – misdemeanor and fined not more than \$5,000
 - There are also civil penalties that can involve the payment of attorney's fees and removal from your job



PRIVACY ACT STATEMENTS

- ◆ Only used when you collect personal information directly from an individual
- ◆ No generic statements – tailored to the systems notice
- ◆ Whenever possible, should be on the form that requests the information
- ◆ Should be made available upon request
- ◆ Should be updated regularly



ROUTINE ACCESS/ DISCLOSURE

- ## ACCOUNTING
- ◆ Who has access to my file???
 - ◆ Why do they have access to my file???
 - ◆ 12 Conditions of Disclosure and the requirement to maintain disclosure accounting will be discussed in a separate breakout.



PRIVACY ACT EXEMPTIONS

- ◆ REMINDER: The Privacy Act exemption must be addressed in the systems notice if it is to be claimed. Exception: classified (k) (1) and compiled in anticipation of litigation (d)(5)



“J” EXEMPTIONS

- ◆ (j)(1) – maintained by the CIA
- ◆ (j)(2) – maintained by an agency or its component which performs as its principal function any activity pertaining to the enforcement of criminal laws



“k” EXEMPTIONS

- ◆ (k)(1) – classified
- ◆ (k)(2) – investigatory material compiled for law enforcement purposes by activities whose primary functions DO NOT pertain to law enforcement
- ◆ (k)(3) – maintained in connection with providing protective services to the President of the United States or other individuals pursuant to Title 18, section 3056



“k” EXEMPTIONS

- ◆ (k)(4) – required to be maintained and used solely as statistical records
- ◆ (k)(5) – investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications – but only to the extent that disclosure could reveal the identity of a confidential source who has been given an express promise of confidentiality



“k” EXEMPTIONS

- ◆ (k)(6) – testing or examination material used solely to determine individual qualifications for appointment or promotion – disclosure would compromise the objectivity or fairness of the testing or examining process
- ◆ (k)(7) – evaluation material used to determine potential for promotion – disclosure would reveal confidential source



YOUR ROLE AND RESPONSIBILITY

- ◆ Do not collect personal information that has not been authorized for collection
- ◆ Do not maintain illegal files – inaccurate information
- ◆ Do not send personal information over the email or fax that is not properly marked and alerts the reader to the necessary protections accorded such information



ROLE AND RESPONSIBILITY

- ◆ Do not maintain records longer than permitted or destroy them before the records disposal requirements are met
- ◆ Do not place unauthorized documents in a records system
- ◆ Do not commingle information about individuals in the same file
- ◆ Properly mark all documents that contained Privacy Act protected information



ROLE AND RESPONSIBILITY

- ◆ Ensure message traffic, faxes, and emails that contain personal information are properly marked
- ◆ Respect privacy and remember the civil and criminal penalties associated with violating the Act
- ◆ Do not place information on the Internet that is Privacy Act protected or which would be released if requested under FOIA



ROLE AND RESPONSIBILITY

- ◆ Do not entertain verbal requests, unless the information is releasable under FOIA
- ◆ Think Privacy before you seek to establish new data collections, fax personal information, etc.